

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DONNA (HARTSOE) PRICE**APPELLANT****VS.****DOCKET NO. 2014-CA-00327-COA****TIMOTHY MICHAEL SNOWDEN****APPELLEE**

**RESPONSE TO APPELLEE'S PETITION
FOR A WRIT OF CERTIORARI**

COMES NOW the Appellant, Donna (Hartsoe) Price, by and through her counsel of record, and files this Response to Appellee's Petition for a Writ of Certiorari pursuant to Rule 17 of the Mississippi Rules of Appellate Procedure, and would respectfully state unto this Honorable Court as follows:

STATEMENT OF THE CASE

1. Donna (Hartsoe) Price, Appellant, hereinafter "Price," and Timothy Michael Snowden, Appellee, hereinafter "Snowden," reached agreements as to custody, support, and visitation for their minor son twice, once in 2004 and again 2009. Each time, the agreement provided that Snowden would pay child support to Price at a rate "based upon fourteen per cent (14%) of his adjusted gross income pursuant to statutory guidelines. Said child support shall be adjusted appropriately . . . based upon the income of [Snowden] as documented for the preceding year. . . [Snowden] will provide necessary documentation."

2. From the time of said agreements until the trial below, Snowden actively hid his receipt of regular allowances from his employer for housing and sustenance. His active hiding of that income is evidenced in the lower court by his refusal to provide copies of his paystubs, then providing redacted copies of his paystubs before being

ordered by the court to produce unredacted income statements. Snowden has also never provided the Court or the Appellant with an 8.05 Financial Declaration, but still maintains to this court that he promptly and reliably provided the “necessary documentation” he agreed to in the orders by submitting copies of his tax returns every year.

3. Despite his best efforts to hide his untaxed employer allowances from the Appellant, this income came to light as a result of Snowden’s attempt to emancipate his son and avoid further child support payments to Appellant. Thereafter the Appellant, through counsel, sought the child support arrearages from this undisclosed income based upon the previous court orders directing support pursuant to the statutory child support guidelines.

DISCUSSION OF APPELLEE SNOWDEN’S ISSUES

1. Whether the opinion rendered by the Court of Appeals conflicts with prior published decisions rendered by the Mississippi Supreme Court

a. The only case law in Mississippi directly on point for the issues herein is the Court of Appeals decision in Bustin v. Bustin, 806 So. 2d 1136 (Miss. App. 2001). In that case, the Court found that a minister’s untaxed housing allowance was deemed income to be included for child support purposes. This holding is consistent with every other state with statutes or case law found pertaining to untaxed allowances, such as those given to military personnel presently at issue, which would all treat Snowden’s untaxed allowances as income for child support purposes.¹

¹ **Alabama:** *Rogers v. Sims*, 671 So.2d 714 (Ala.Civ.App. 1995); **Alaska:** *Childs v. Childs*, 310 P.3d 955 (Alaska 2013); **Arkansas:** *Gillespie v. Gillespie*, CA08-679, Ct of App. of AR, Division 1 (2009); **Arizona:** *Patterson v. Patterson*, 248 P.3d 204 (Ariz.App. Div. 1 2011); **California:** *In re Marriage of Gimble*, A123565 (2010); **Colorado:** *In re Parental Responsibilities of L.K.Y.*, No. 12CA1674 (2013); **Connecticut:** *Levine v. Levine*, No. KNoFA1141116757S (2012); **Delaware:** Delaware Rules, Family

b. Appellee argues that, combined, Kilgore v. Kilgore, 741 So. 2d 351 (Miss. App. 1999); Arrington v. Arrington, 80 So. 3d 160 (Miss. App. 2012); and Walton v. Snyder, 984 So. 2d 343 (Miss. App. 2007) support the contention that the allowances were not part of his included income and therefore he owes no arrearages. However badly he may wish to undo those previous agreed orders, though, they remain. Snowden bound himself to the statutory child support guidelines in the agreements, and those guidelines include “any other payments made by any person, private entity, federal or state government or any unit of local government” [Miss. Code 43-19-101(3)(1)]. Furthermore, the impetus was on Snowden to file any 60(b) motions within the required timeframe once he realized income he did not wish to include for child support consideration would be included by the guidelines.

c. Any ambiguity which may be found in the parties’ two agreements would originate outside the “four corners” of those agreements, as they plainly state the parties would abide by the statutory child support guidelines. As this Court found in the case In re Estate of Hodges, 807 So. 2d 438, 445 (Miss. 2002), language plain on its face should not subsequently have ambiguity written into the text.

Court Rules of Civil Procedure Rule 502(4)(ii); **Florida:** *Rabbath v. Farid*, 4 So.3d 778, Fla.App. 1 Dist. 2009; **Georgia:** *Eldridge v. Eldridge*, 732 S.E.2d 411 (Ga. 2012); **Hawaii:** Child Support Enforcement Agency v. MSH, CAAP-11-0001037 (2013); **Illinois:** *In re Marriage of McGowan*, 638 N.E.2d 695 (Ill.App. 1 Dist. 1994); **Iowa:** *Hixon v. Lundy*, 695 N.W.2d 333 (Iowa App. 2004); **Louisiana:** *State, Dept of Social Services ex. Rel. D.F. v. L.T.*, 934 So.2d 687 (La. 2006); **Michigan:** *Sharpe v. Sharpe*, No. 310526 Court of Appeals (2013); **Minnesota:** *Jackson v. Jackson*, 403 N.W.2d 248 (Minn.App. 1987); **Montana:** *In re Marriage of David*, 221 P.3d 1209 (Mont. 2009); **New Jersey:** *Martinez v. Martinez*, 660 A.2d 13 (N.J.Super.Ch. 1995); **New Mexico:** *Peterson v. Peterson*, 652 P.2d 1195 (N.M. 1982); **New York:** *C.H. v. S.H.*, 34 Misc.3d 1218(A) (2012); **Ohio:** *Merkel v. Merkel*, 51 Ohio App.3d 110 (1988); **Oklahoma:** *Hees v. Hees*, 82 P.3d 107 (Okla.Civ.App. 2003); **Oregon:** *In re Marriage of Stokes*, 228 P.3d 701 (Or.App. 2010); **Pennsylvania:** *Alexander v. Armstrong*, 609 A.2d 183 (Pa.Super 1992); **South Dakota:** *Hautala v. Hautala*, 417 N.W.2d 879 (S.D. 1988) (later criticized on a separate issue); **Tennessee:** *Wade v. Wade*, 115 S.W.3d 917 (Tenn.App. 2002); **Wisconsin:** *Greene v. Greene*, 530 N.W.2d 69, 191 Wis.2d 360 (Wis.App. 1995); **D.C.:** *Brown v. Hines-Williams*, 2 A.3d 1077 (D.C. 2010)

d. The Court of Appeals correctly used the legal standards on review, including a *de novo* review of the questions of law, which include contract interpretation and child support guidelines.

2. Whether the present case on appeal involves issues of public importance requiring determination by the Supreme Court

a. Appellee argues that agreed orders such as those at issue herein should stand—that they should not be modified on appeal. Incidentally, Appellant would agree. The previous orders in this case should not be modified on appeal. Those previous orders required Snowden to pay child support according to the statutory child support guidelines. When Snowden failed to include his untaxed allowances in his child support calculations, he began accruing arrearages which may not subsequently be forgiven.

b. Appellant agrees there is an issue of public importance at stake in this case. That issue is the public importance of insuring that children of this State receive proper support needed to meet their basic needs and try to help them become productive members of society. It is also very telling how this issue arose in the first place: Snowden was petitioning the lower court to emancipate his son so as to stop any future child support payments to the Appellant. Only then did the issue of Snowden's continued contempt come to light. In addition to his contempt for deliberately not including (and hiding) his untaxed income in calculating his support requirement required by law; Snowden was also in contempt for: 1. unilaterally stopping all support payments without a court order; 2. refusing to pay his share of college tuition expenses as ordered by the court; and 3. deliberately not paying child support on his other "sea pay" income. The Court of Appeals reviewed all of this in the record and recognized it for what it really is:

another attempt by an absent parent to shirk their financial responsibilities to a child of this State.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests that this Honorable Court deny Appellee's Petition for a Writ of Certiorari in this matter. Pursuant to Rule 17(d) of the Mississippi Rules of Appellate Procedure, Appellant attaches her response to the motion for rehearing as an appendix hereto.

Respectfully submitted,

TAYLOR JONES TAYLOR

s/ Benjamin L. Taylor

Benjamin L. Taylor, MSB #100240

Attorney for Appellant

961 Main St.

P.O. Box 188

Southaven, MS 38671

662-342-1300

CERTIFICATE OF SERVICE

I, Benjamin L. Taylor, do hereby certify that I have this day forwarded a true and correct copy of the above and foregoing Response to:

James Amos, Esq.
Attorney for Appellee
2430 Caffey St.
Hernando, MS 38632

Hon. Percy Lynchard, Jr.
Chancellor
P.O. Box 340
Hernando, MS 38632

This the 11th day of January, 2016.

s/ Benjamin L. Taylor
Benjamin L. Taylor
Certifying Attorney